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Knowledge, Focus, Expertise

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December 30, 2013

FILED VIA CM/ECF

Honorable Sandra L. Townes, U.S.D.J.
United States District Court
Eastern District of New York

**RE: Excell Brands, LLC v. USA Feilong Int'l Trading Corp., et. al.
1:13-cv-06046-SLT-RML**

Dear Judge Townes,

We represent Defendants USA FEILONG INT'L TRADING CORP. and DAVID CHEN in the above-captioned matter. An Entry of Appearance was filed on CM/ECF this morning and a courtesy call given to counsel of record for Excell Brands.

We respectfully request a pre-motion conference with the Court concerning defendant's intent to file a motion pursuant to FRCP 12 in lieu of an Answer.

Plaintiff filed a Summons and Complaint on November 18, 2013 alleging violations under the Lanham Act, 15 U.S.C. § 1125(a); common law trademark infringement and unfair competition; and violations under the N.Y. General Business Law § 349.

Defendants seek to dismiss plaintiff's complaint on all counts as plaintiff cannot state a viable claim as follows:

1. Plaintiff cannot state a claim for trade dress infringement under the Lanham Act (Count I) because the law authorizes an action for violation under Section 43(a) of the Lanham Act to show that the plaintiff owns the trademark or trade dress it seeks to protect.
2. Plaintiff cannot state a claim for unfair competition under the Lanham Act (Count II) because the law authorizes an action for violation under Section 43(a) of the Lanham Act to show that the trademark and/or trade dress it seeks to protect is distinctive.
3. Plaintiff cannot recover damages or profits for infringement of a trademark or trade dress or for unfair competition because it cannot show that potential

purchasers identify the trademark or trade dress with defendant rather than plaintiff.

4. Plaintiff cannot recover damages or profits for infringement of a trademark or trade dress or for unfair competition because it cannot show that any confusion between plaintiff's products and defendant's products.
5. Plaintiff cannot recover damages or profits for infringement of a trademark or trade dress or for unfair competition because it cannot show that buyers who wished to purchase plaintiff's goods have been misled into buying defendant's goods.

We thank the Court for its consideration. Please contact the undersigned should the Court need anything further.

Respectfully submitted,

/s/ Heng Wang

Heng Wang, Esq.

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cc: Andrew Reese Bronsnick, ESQ.
Counsel for Excell Brands, LLC